

DEPARTMENT OF INDUSTRIAL RELATIONS

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March 22, 2004

Gary J. Canepa, Director of Operations
Northern California Electrical
Construction Industry
Labor Management Cooperative Trust
1301 Ygnacio Valley Road, Suite 201
Walnut Creek, CA 94598

Re: Public Works Case No. 2002-084
Mare Island Technology Academy/Charter School

Dear Mr. Canepa:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws and is made pursuant to title 8, California Code of Regulations, section 16001(a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the construction of the Mare Island Technology Academy Charter School ("Project") is a public works project pursuant to Labor Code section 1720(a).

Factual Background

"MIT Academy" is a private, non-profit public benefit corporation that provides education for students in grades 6-12. The Project is the construction by MIT Academy of charter school facilities consisting of Mare Island Technology ("MIT") Academy High School and MIT Academy Middle School at 2 Positive Place in Vallejo, California.

The Project consists of four phases. In Phase 1, 546 students will be accommodated in portable classrooms. In Phase 2, 702 students will be accommodated in a mix of permanent and portable classrooms, and permanent bathrooms and storage will be installed for the high school. In Phase 3, 780 students will be accommodated, with a permanent multi-purpose facility and the portable lunch room will be removed. In Phase 4, the number of students will remain at 780, with all portable buildings removed, and the construction of a permanent middle school, high school and administrative buildings. (City of Vallejo Planning Commission Report, dated April 15, 2002, p. 2).

Work on the Project includes site grading, paving, landscaping, construction of buildings, recreational fields and courts, walkways, ramps, stairs, decks and parking spaces, and installation of irrigation lines, chain link fences and lighting. MIT Academy has privately contracted with various concrete and electrical contractors to perform the work.

City has waived miscellaneous city permit fees¹ in the approximate amount of \$12,453 for the Project. (Resolution No. 02-327 N.C., dated September 10, 2002; Memo from City Manager to Mayor and City Council, dated September 10, 2002). Additionally, the Vallejo City Unified School District ("VCUSD") has waived developer fees.² (Letter of August 28, 2002 from Mel Jordan, VCUSD, to MIT Academy).

Under what is now Labor Code section³ 1720(a), (as amended by statutes of 2001, chapter 938, section 2), "public work" is defined as "construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds" The Project clearly constitutes construction and installation done under contract.

The next inquiry is whether the work is being paid for out of public funds. Labor Code section 1720(b)(4) provides that "paid for in whole or in part out of public funds" means the following:

Fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at less than fair market value, waived, or forgiven by the state or political subdivision.

The fee waivers by City and VCUSD constitute payment of public funds,⁴ and the Project is therefore a public work.

¹ Waived fees consist of the following: building permit, plan check, tenant improvement, microfilm, title 24 plan review, Fire Code review and excise tax.

² Such waived fees are believed to be approximately \$8,200. (Memo from City Manager to Mayor and City Council, dated September 10, 2002).

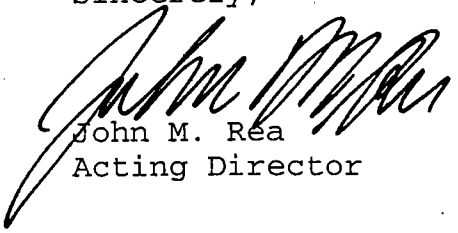
³ Unless otherwise indicated, all statutory references are to the Labor Code.

⁴ You have also raised as potential payments of public funds City's deferment of fees and the \$1 per year, 40-year ground lease between MIT Academy and VCUSD. While fee deferments and possible below fair market rent may constitute the payment of public funds under Section 1720(b)(4) and (b)(3), respectively, these issues need not be addressed in light of my finding that the fee waivers constitute the payment of public funds.

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I hope this determination satisfactorily answers your inquiry.

Sincerely,



John M. Rea
Acting Director